TESTIMONY

of

JOE A. GARCIA

Tribal Council Member

Pueblo of San Juan

on

H.R. 103

TESTIMONY OF JOE A. GARCIA ON H.R. 103

Thank you for inviting me to give testimony on H.R. 103, a bill to amend the Indian Gaming Regulatory Act of 1988 to protect Indian tribes from coerced labor agreements.

H.R. 103 is about protecting tribal sovereignty-sovereignty that has not been taken away by the National Labor Relations Act or the Indian Gaming Regulatory Act. Several States, such as California, have improperly tried to take away this sovereignty from Indian tribes through the so-called compact "negotiation" process. The balance intended in the Indian Gaming Regulatory Act has been upset by the Supreme Court's *Seminole* decision, and States now have the power to force illegal compact provisions on Indian tribes. H.R. 103 would restore that balance, at least, in the area of labor relations.

At the outset, I want to say that my tribe, the Pueblo of San Juan, recognizes the contributions that labor unions have made in this Country. I am here in support of H.R. 103 solely because it confirms the sovereign governmental right of Indian tribes to make their own labor relations policies based on the economic conditions existing on Indian reservations. Many Indian tribes may well exercise that sovereign authority to welcome labor unions and encourage union organization. But that is a choice for Indian tribes, not for States, and, ultimately, not for the federal government.

It is imperative that the Committee on Resources understand that labor policy on Indian lands is an important aspect of economic regulation that should be, and heretofore has been, left to Indian tribes as sovereign governments. The National Labor Relations Board has concluded that the National Labor Relations Act does not apply to Indian tribes and their wholly-owned business entities, including tribal casinos, on Indian lands because of the Act's exemption for governments. Absent the unbalanced compacting process, it is undisputed that Indian tribes can and do make policy decisions regarding labor relations for their tribal casinos without State interference.

Indian tribes also retain regulatory authority over labor relations with respect to *non-tribal* employers on Indian lands to the same extent as States. My tribe, the Pueblo of San Juan, has won every round of litigation over precisely that issue. On January 11, 2002, the Tenth Circuit Court of Appeals, in *National Labor Relations Board v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002) (en banc), affirmed the power of my Pueblo to outlaw compulsory union membership on its land. In that case, the NLRB wanted to force every employee working for a sawmill on our land to financially support a certain union. The Tribal

Council, of which I am member, felt strongly that the Tribal Council, rather than the NLRB, should make the labor policy for Pueblo land. By a nine to one margin, the Tenth Circuit agreed. The important principle of this case is that Congress has recognized that the Indian tribes are solely responsible for making labor policy for Indian lands, not any federal agency and certainly not the States.

Thus, it is clear that States cannot lawfully impose their policies regarding labor relations on Indian tribes. Nevertheless, we understand that some States believe that they can and should make the labor policy for Indian lands. The States of California and New York, for example, are forcing Indian tribes to enact tribal laws that mandate labor unions in Indian casinos. Otherwise, these States threaten not to sign gaming compacts with the Indian tribes.

Unfortunately, these Indian tribes have no legal recourse against these unlawful and coercive tactics because of *Seminole Tribe v. Florida*, 517 U.S. 44 (1996). As you may recall, the Supreme Court's ruling in the *Seminole* case prevents Indian tribes from suing States for negotiating compacts in bad faith, even though Congress expressly intended to maintain the balance of power between Indian tribes and States by allowing the Indian tribes to sue States in federal court. Consequently, Indian tribes can now be illegally forced to accept the States' labor policy demands (and a host of other demands, for that matter) or give up any hope of obtaining a gaming compact.

The Pueblo of San Juan is certain that Congress never meant for the States to use the Indian Gaming Regulatory Act in this fashion. The Senate Committee Report on the IGRA put it plainly:

The Committee does not intend that compacts be used as a subterfuge for imposing State jurisdiction on tribal lands.

S. Rep. No.100-446, at 14, *reprinted* 1988 U.S.C.C.A.N. 3071, 3084.

And yet, that it essentially what the States of California or New York have done or are attempting to do: they have forced their views of labor policy on the Indian tribes in those states.

Other statements by members of Congress at that time underscore that gaming compacts were not meant to be tools for States to impose their policies on Indian tribes, especially when those policies are not directly related to gaming. As Senator Inouye, IGRA's sponsor, stated on the floor shortly before IGRA cleared the Senate:

There is no intent on the part of Congress that the compacting methodology be used in such areas such as taxation, water rights, environmental regulation, and land use. On the contrary, the tribal power to regulate such activities, recognized by the U.S. Supreme Court . . . remain fully intact. The exigencies caused by the rapid growth of gaming in Indian country and the threat of corruption and infiltration by criminal elements in Class III gaming warranted utilization of existing State regulatory capabilities in this one narrow area. No precedent is meant to be set as to other areas.

134 Cong. Rec. S24024-25 (Sept. 15, 1988) (emphasis added). As the Senate Report and Senator Inouye made clear, the intent of IGRA was to allow States a sufficient role in the regulation of Class III Indian gaming to insure that issues, such as infiltration by organized crime were addressed. The compacting process was *not* intended to allow States to impose their will regarding ancillary issues, such as taxation and labor relations. Labor relations is simply not "directly related to, and necessary for, the licensing and regulation of such [Class III gaming] activity," as IGRA, 25 U.S.C. § 2710(d)(3)(C), requires.

In summary, the skewed compacting process under IGRA is being used improperly by the States to impose *non*-gaming related regulatory or public policies on Indian tribes. We urge Congress to restore the balance in the Indian Gaming Regulatory Act that was lost by the *Seminole* decision. I believe that H.R. 103 is a step in the right direction.

####